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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

2170445

Rodney Keith Rippey

v.

Heidi Mae Rippey

**Appeal from Madison Circuit Court
(DR-05-1067.01)**

MOORE, Judge.

Rodney Keith Rippey ("the father") appeals from a judgment entered by the Madison Circuit Court ("the trial court") to the extent that it determined the amount of past-

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due child support he owes Heidi Mae Rippey ("the mother"). We reverse the trial court's judgment.

Facts and Procedural History

The trial court entered a judgment on March 3, 2006, divorcing the father and the mother. In that judgment, the father was ordered to begin paying the mother monthly child support in the amount of \$141 on April 1, 2006.

On August 30, 2016, the mother filed a complaint seeking a modification of the parties' divorce judgment, requesting, among other things, a modification of the father's monthly child-support obligation; she also requested that the trial court hold the father in contempt for failing to pay child support.

At the trial, the mother testified that the father had not paid any child support until the child began school in 2009. She testified that she did not have any records of what child-support payments the father had or had not made from the time the child started school in 2009 through 2012 and that she could not be certain how much he had paid during that period. She testified, however, that the father had not paid child support "that often" during that period. In calculating

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the father's child-support arrearage, the mother assumed that the father had paid no child support from the time that the child started school in 2009 through 2012. The mother did, however, introduce records of the child-support payments made by the father beginning in 2013, and she used those records to calculate the amount she was claiming the father owed her for past-due child support.

The father testified that he had money orders showing that he had paid child support in the amounts of \$760 in 2010, \$920 in 2011, \$1,825 in 2012, \$1,250 in 2013, \$605 in 2014, \$935 in 2015, and \$605 in 2016.

After a trial, the trial court entered a judgment on August 10, 2017, that, in pertinent part, found the father "in arrears in his payment of child support in the following amounts: principal in the amount of \$8,072.00 with interest accruing at 12% of \$9,232.93 and principal in the amount of \$8,449.00 with interest accru[ing] at 7.5% of \$1,985.74 as of August 1, 2017." The trial court entered a judgment against the father in the amount of \$27,739.67.¹ We note that all the

¹The trial court's judgment also addressed other requests for relief included in the mother's complaint; it also denied all requests not specifically mentioned in the judgment.

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amounts determined by the trial court to be owed by the father for past-due child support and interest are identical to the amounts calculated and testified to by the mother.

On September 7, 2017, the father filed an answer and a request for visitation; he also filed a postjudgment motion that same day.² On October 11, 2017, the parties filed a written consent to extend the time to rule on the father's postjudgment motion to December 20, 2017; however, because the trial court failed to rule on the father's postjudgment motion on or before December 20, 2017, the father's postjudgment motion was deemed denied by operation of law on that date. Rule 59.1, Ala. R. Civ. P. On January 30, 2018, the father timely filed his notice of appeal.

²We interpret the father's request for visitation as a purported counterclaim; however, because a final judgment had already been entered in the case, that counterclaim was a nullity. See, e.g., Davis v. Bayview Loan Servicing, LLC, 132 So. 3d 662, 667 (Ala. Civ. App. 2013) ("Once a judgment has been entered in a case, a party cannot be permitted to file a counterclaim in the same matter. To do so would deprive the party opposing the counterclaim of the opportunity to respond to the counterclaim. Accordingly, we conclude that the Bayview parties' counterclaim, filed after the entry of the judgment in this matter, was a nullity.").

Standard of Review

''[W]here the evidence has been [presented] ore tenus, a presumption of correctness attends the trial court's conclusion on issues of fact, and this Court will not disturb the trial court's conclusion unless it is clearly erroneous and against the great weight of the evidence, but will affirm the judgment if, under any reasonable aspect, it is supported by credible evidence.'''

Reed v. Board of Trs. for Alabama State Univ., 778 So. 2d 791, 795 (Ala. 2000) (quoting Raidt v. Crane, 342 So. 2d 358, 360 (Ala. 1977)).

Discussion

On appeal, the father argues that the trial court failed to give him credit for certain child-support payments that he made to the mother.

"The burden is on the party asserting a claim for an arrearage to establish that an arrearage does in fact exist. Tanana v. Alexander, 404 So. 2d 61, 63 (Ala. Civ. App. 1981) ('The [party seeking to establish the arrearage] had both the burden of producing evidence and the obligation to establish the amount of the arrearage.')."

C.M. v. B.S.L., 906 So. 2d 204, 207 (Ala. Civ. App. 2005).

In the present case, the father testified that he did not have any records of the child support he had paid between 2006 and 2010, but, he said, he recalled having paid some child

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support during that period. He testified that he had records beginning in 2010; specifically, he testified that he had money orders showing that he had paid child support to the mother in the following amounts: \$760 in 2010, \$920 in 2011, and \$1,825 in 2012. On the other hand, the mother testified that she did not have records of what child-support payments the father had made from the time the child started school in 2009 through 2012 and that she could not be sure how much support he had actually paid during those years. The mother's testimony indicates that the father had, in fact, paid some amount of child support during that period. Therefore, we conclude that, to the extent that the trial court accepted the mother's calculations, which relied on the father's having made no payments from the time the child started school in 2009 through 2012, the trial court erred.

With regard to the determination of the amount of the father's child-support arrearage for the period between April 2006 and when the child started school in 2009, however, the mother testified unequivocally that the father had paid no child support during that period. With regard to the determination of the amount of the father's child-support

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arrearage that accumulated between January 2013 and August 1, 2017, the mother testified that she had records from those years and that she had given the father credit for all the payments he had made during those years. Although the father's testimony might have contradicted the mother's testimony with regard to what payments the father had or had not made between April 1, 2006, and 2010 and between January 2013 and August 1, 2017, considering the ore tenus standard of review, we cannot conclude that the trial court erred in accepting the mother's testimony as to what child-support payments the father had made during those periods. Reed, 778 So. 2d at 795.

Conclusion

Based on the foregoing, we reverse the trial court's determination of the father's child-support arrearage and we remand this cause for a recalculation of the amount of the arrearage in accordance with this opinion.

The mother's request for the award of attorney's fees on appeal is denied.

REVERSED AND REMANDED.

Thompson, P.J., and Donaldson, Edwards, and Hanson, JJ., concur.